

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:EEE:EOET:EO3
PLR-117168-19

Date:
December 10, 2019

Trustee	=
Trust	=
Grantor	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Charity A	=
Charity B	=
Charity C	=
X	=

Dear :

This letter responds to a July 9, 2019, request for rulings from your authorized representative regarding whether certain transactions will constitute acts of self-dealing by you under section 4941 of the Internal Revenue Code.

FACTS

Grantor died on Date 1. Pursuant to Grantor's will, Grantor's interests in several specified grantor retained annuity trusts were distributed to Trustee to hold, administer, and distribute in accordance with the terms of Trust, as amended and restated by Trustee on Date 2. Trustee is the surviving spouse of Grantor.

Trust was established as a charitable lead annuity trust with the annuity payable to Charity C. On Date 3, Charity C was divided, as authorized by court order, into two separate foundations, Charity A and Charity B. Charity A and Charity B each received one-half of Charity C's guaranteed annuity interest in Trust.

Trust provides for an initial annuity amount to be paid in equal quarterly installments that increases by a set percentage each year until Trust terminates and the remaining trust

principal is distributed to the children of Trustee and Grantor. Trust is to have a term, computed with respect to the date of Grantor's death, just sufficient to make the income interest in the trust for which a deduction would be allowed under section 2055 have an aggregate value of X percent of the aggregate fair market value of all amounts in the trust at its commencement. Upon expiration of this term, Trustee is to distribute all trust principal to the children of Trustee and Grantor, the remainder beneficiaries.

Pursuant to an estate tax closing document, Grantor's estate was allowed a deduction under section 2055 equal to X percent of the aggregate fair market value of all amounts in trust at Trust's inception. On Date 5, we ruled that Trust will terminate on Date 4.

Trustee represents that, before any distribution to the remainder beneficiaries, all annuity payments will be made to Charity A and Charity B in accordance with the terms of Trust and consistent with the schedule of amounts attached to the ruling request.

Trustee also represents that, in discharge of Trustee's fiduciary duties, she paid certain accounting, legal, and related expenses on behalf of Trust. After Date 4, and in the course of winding up the affairs of Trust, Trustee intends to seek approval from a court of competent jurisdiction for reimbursement of these expenses. To the extent Trustee obtains such approval, Trustee intends to make this reimbursement and remit to the remainder beneficiaries the trust assets net of this reimbursement. The reimbursements will only be made after Charity A and Charity B have received their entire guaranteed annuity amounts due under Trust.

RULINGS REQUESTED

You have requested the following rulings:

- 1) Trustee's distribution after Date 4 of the remaining trust principal of Trust to the remainder beneficiaries will not constitute an act of self-dealing under section 4941 by Trustee.
- 2) The reimbursement from Trust after Date 4 and after obtaining approval by a court of competent jurisdiction of certain legal, accounting, and related expenses incurred by Trustee on behalf of Trust will not constitute an act of self-dealing under section 4941 by Trustee.

LAW

Section 4941 imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4946(a)(1)(A), (B), and (D) provide, in part, that the term "disqualified person" includes a substantial contributor to a private foundation, a foundation manager, and a member of the family, as defined in section 4946(d), of any substantial contributor to or

foundation manager of a foundation. Section 4946(a)(2) provides that the term “substantial contributor” means any person who is described in section 507(d)(2), which includes the creator of a trust.

Section 4946(b) provides that a “foundation manager” includes an officer, director, or trustee of a foundation.

Section 4947(a)(2) provides, in part, that in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under certain specified sections of the Internal Revenue Code, including section 2055 and section 2522, section 4941 shall apply as if such trust were a private foundation.

Example 2 of Treas. Reg. § 53.4947-1(e)(2) describes a scenario in which H creates a trust under which X, a section 501(c)(3) organization, receives \$20,000 per year for a period of 20 years, remainder to S, H's son. H is allowed a deduction under section 2522 for the present value of X's interest. Example 2 provides that when the final payment to X has been made at the end of the 20-year period in accordance with the terms of the trust, the provisions of section 4947(a)(2) will cease to apply to the trust because the trust no longer retains any amounts for which the deduction under section 2522 was allowed.

ANALYSIS

Section 4941 imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Pursuant to section 4947(a)(2), section 4941 applies to Trust as if it were a private foundation because it is not exempt from tax under section 501(a), not all of the unexpired interests are devoted to one or more of the purposes described in section 170(c)(2)(B), and it has amounts in trust for which a deduction was allowed under section 2055. Trustee is a disqualified person with respect to Trust because she is a foundation manager and, as the surviving spouse, a member of the family of a substantial contributor. See section 4946(a)(1)(B) and section 4946(b).

After Trustee distributes the final annuity payments to Charity A and Charity B in accordance with the terms of Trust, Trust will no longer have any amounts in trust for which a charitable deduction was allowed and therefore will cease to be described in section 4947(a)(2). See Example 2 of Treas. Reg. § 53.4947-1(e)(2). At the time of the distribution of remaining principal to the remainder beneficiaries, then, Trust will not be treated as if it were a private foundation for purposes of section 4941. For the same reason, Trust will not be treated as if it were a private foundation at the time of the reimbursement of Trustee for expenses incurred in furtherance of her fiduciary duties, which will occur after Charity A and Charity B have received their entire guaranteed annuity amounts in accordance with the terms of Trust and the court has approved the reimbursement of expenses.

RULINGS

Based solely on the facts and representations submitted by Trustee, we rule as follows:

- 1) Trustee's distribution after Date 4 of the remaining trust principal of Trust to the remainder beneficiaries will not constitute an act of self-dealing under section 4941 by Trustee.
- 2) The reimbursement from Trust after Date 4 and after obtaining approval by a court of competent jurisdiction of certain legal, accounting, and related expenses incurred by Trustee on behalf of Trust will not constitute an act of self-dealing under section 4941 by Trustee.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Trustee and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, 2019-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if: (1) there has been a misstatement or omission of controlling facts; (2) the facts at the time of the transaction are materially different from the controlling facts on which the ruling is based; or (3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, § 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the proposed transaction under any other provision of the Code or regulations.

This letter is directed only to Trustee. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Trustee's authorized representatives.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Matthew Giuliano
Branch Chief
Exempt Organizations Branch 1
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: